IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.1490 OF 2006

Smt. Sheela Wd/o John Pitambar Merchant & Ors. .... Petitioners
Vs.
Shri Hanumant Jani & Ors. .... Respondents

Shri A.N. Maniyar for the Petitioners.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: APRIL 10, 2006

P.C:

1. Heard the learned Advocate for the petitioners. The petitioners challenge the order dated 30-8-2005 passed in Appeal No.3 of 2002 in Obstructionist Notice No.57 of 1985 in R.A.E. & R. Suit No.4635 of 1983. By the impugned order the said appeal, against the order of the trial Court passed on 2-8-2002 whereby the obstructionist notice was discharged, was dismissed.

2. The suit filed by the petitioners for recovery of possession of Room No.7, House No.71, Bazar Road, Bandra (West), Mumbai from the original tenant was decreed on 1-12-1984. On 19-2-1985 the petitioner No.2 went to execute the decree along with the Bailiff which was resisted by the respondent No.2 on the ground that the respondents are the lawful sub-tenants in relation to the suit premises. The petitioner No.2 filed affidavit

and took out the Obstructionist Notice No.57 of 1985. The same was contested by the respondents. After recording the evidence, the trial Court discharged the obstructionist notice by judgment and order dated 2-8-2002 which was carried in appeal by the petitioner which was dismissed by the impugned order.

3. The only contention which is sought to be raised on behalf of the petitioners is that the claim of sub-tenancy has not been established by any agreement in writing inspite of the fact that the respondents themselves had claimed existence of such an agreement between the parties. Plain reading of the judgment passed by the trial Court as well as by the lower Appellate Court discloses that undisputedly the original tenant left the premises in the year 1975. The obstructionists paid the rent in respect of the suit premises till December, 1982. The obstructionists are residing in the suit premises since 1950 and continued to reside till the date of filing of the suit. All these facts have been clearly to the knowledge of, besides being clearly admitted by the petitioners. The fact that the obstructionists had paid the rent to the landlord has not been disputed by the petitioners and there is a clear finding arrived at in that regard by the trial Court and duly confirmed by the lower Appellate Court. Considering the same, the concurrent

finding to the effect that the materials on record clearly reveal that the obstructionists are protected under Section 14 of the Bombay Rent Act cannot be found fault with and on that count the obstructionist notice was rightly discharged by the trial Court.

4. Merely because there is no written agreement or that the respondents could not produce the written agreement inspite of the initial plea in that regard having been raised, that by itself will not be sufficient to conclude, in the facts and circumstances of the case, that the respondents had failed to establish the plea of sub-tenancy. As regards the non-production of the written agreement, the respondents have clearly explained the same being on account of misplacement and the agreement copy being not traceable. The same, coupled with the fact that the petitioners have clearly admitted their occupation in the suit premises since 1950, the payment of rent till 1982 without any objection by the petitioner, cessation of occupation of the original tenant in the premises since 1975 and the petitioners being residing on the second floor of the same building, no fault can be found with the concurrent findings arrived at by the Courts below. There is no scope for interference in exercise of writ jurisdiction in the concurrent findings in that regard. Being so, the petition fails and is hereby rejected.

(R.M.S. Khandeparkar, J.)

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